

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No. : 10/757,629  
Inventor(s) : Mark J. Kline, et al.  
Filed : January 14, 2004  
Art Unit : 3761  
Examiner : Melanie Jo Hand  
Docket No. : 8194C  
Confirmation No. : 4664  
Customer No. : 27752  
Title : Absorbent Article With Improved Fastening System

**APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

With regard to the above-identified application, an Office Action was mailed on December 28, 2010 and a timely Notice of Appeal was filed on March 28, 2011. This Appeal Brief is filed pursuant to that Notice, with a two month extension, per the attached petition and the required fee.

**REAL PARTY IN INTEREST**

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

**RELATED APPEALS AND INTERFERENCES**

There are no known related appeals, interferences, or judicial proceedings.

### STATUS OF CLAIMS

Claims 1, 8-10, and 34-38 are pending. Claims 2-7 and 11-33 are canceled. Claims 1, 8-10, and 34-38 stand rejected. Claims 1, 8-10, and 34-38 are appealed. The appealed claims are set forth in the Claims Appendix.

### STATUS OF AMENDMENTS

The Applicant has not filed an amendment subsequent to the last Office Action.

### SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 claims an article (#20 in Fig. 1, page 3, line 22 – page 4, line 2) to be worn about a wearer comprising: a surface fastening system (#40 in Fig. 2, page 12, line 22 – page 14, line 14) having a primary direction of load bearing (x in Figs. 2, 3, 6-8, and page 14, lines 18-21) the surface fastening system including a first surface fastening element (#48 in Figs. 1, 3, #68 in Figs. 6, 7, page 19, line 22) and a second surface fastening element (#49 in Fig. 1, page 19, line 23), the first fastening element being joined to the article, the second fastening element being disposed so as to be generally in a face to face relationship with the first fastening element when the surface fastening system is in an engaged configuration to fasten at least a portion of the article, wherein an unjoined portion (#66 in Figs. 6, 7, #72 in Fig. 8, page 18, line 26 – page 19, line 16) of the second fastening element is unjoined from an underlying structure of the article, the unjoined portion including an unjoined dimension Y ( $y_1$ ,  $y_2$ ,  $y_3$ , in Fig. 4B, and page 17, line 28 – page 18, line 10) extending substantially parallel to a longitudinal axis (#100 in Fig. 1, page 4, line 11) of the article, the unjoined dimension Y increasing from a laterally outboard edge ( $x_a$  in Fig. 3, page 14, lines 22-34) of the unjoined portion to a laterally inboard edge ( $x_b$  in Fig. 3, page 14, lines 22-34) of the unjoined portion.

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The Applicant argues the appealed claims all together.

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 8-10, and 34-38 are unpatentable under 35 USC § 102(a) and (e) over Kline (US 5,957,908).

#### ARGUMENTS

The rejections of claims 1, 8-10, and 34-38 are unpatentable under § 102(a) and (e) over Kline '908 are improper, because the references does not disclose each and every claim limitation recited in the Applicant's independent claim.

Independent claim 1, recites in part:

An article to be worn about a wearer comprising: a surface fastening system...including a first surface fastening element and a second surface fastening element...wherein an unjoined portion of the second fastening element is unjoined from an underlying structure of the article, the unjoined portion including an unjoined dimension Y extending substantially parallel to a longitudinal axis of the article, the unjoined dimension Y increasing from a laterally outboard edge of the unjoined portion to a laterally inboard edge of the unjoined portion.

So, in claim 1, the Applicant claims a portion that is "unjoined."

The Applicant's specification clearly defines the term "joined," by stating:

The backsheet 26 may be joined to the topsheet 24, the absorbent core 28 or any other element of the diaper 20 by any attachment means known in the art. (As used herein, the term "joined" encompasses configurations whereby an element is directly secured to another element by affixing the element directly to the other element, and configurations whereby an element is indirectly secured to another element by affixing the element to intermediate member(s) which in turn are affixed to the other element.) For example, the attachment means may include a uniform continuous layer of adhesive, a patterned layer of adhesive, or an array of separate lines, spirals, or spots of adhesive. One preferred attachment means comprises an open pattern network of filaments of adhesive as disclosed in U.S. Patent 4,573,986 entitled "Disposable Waste-Containment Garment", which issued to Minetola et al. on March 4, 1986. Other suitable attachment means include several lines of adhesive filaments which are swirled into a

spiral pattern, as is illustrated by the apparatus and methods shown in U.S. Patent 3,911,173 issued to Sprague, Jr. on October 7, 1975; U.S. Patent 4,785,996 issued to Ziecker, et al. on November 22, 1978; and U.S. Patent 4,842,666 issued to Werenicz on June 27, 1989. Each of these patents is incorporated herein by reference. Adhesives which have been found to be satisfactory are manufactured by H. B. Fuller Company of St. Paul, Minnesota and marketed as HL-1620 and HL 1358-XZP. Alternatively, the attachment means may comprise heat bonds, pressure bonds, ultrasonic bonds, dynamic mechanical bonds, or any other suitable attachment means or combinations of these attachment means as are known in the art.

(Page 5, line 28 – page 6, line 12.)

According to the Applicant's specification, the term "joined" includes attachment means. And "attachment means" includes any kind of bonds, including areas with spot bonds. So, the term "joined" includes areas with spot bonds. Obviously, the term "unjoined" means the opposite of "joined." If the term "joined" includes areas with the bonds (such as spot bonds), then the term "unjoined" cannot include areas with bonds (such as spot bonds).

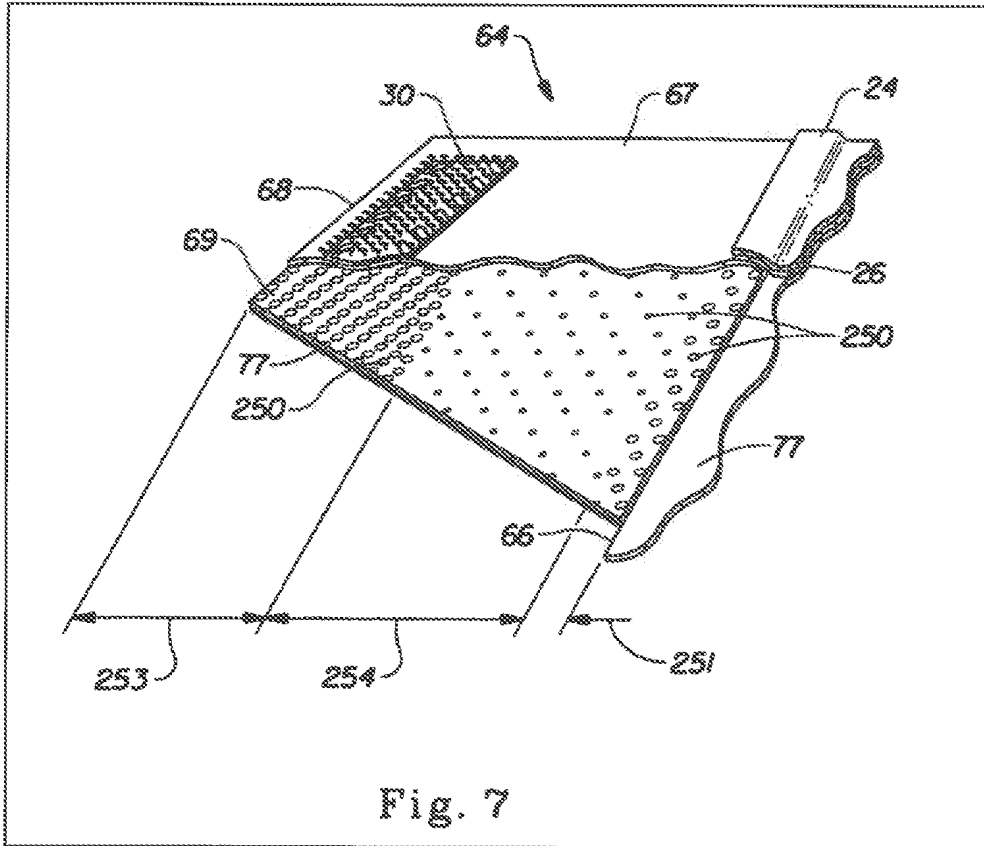
The last Office Action cited Kline '908 against claim 1. In particular, the last Office Action cited the embodiment of Figure 7 against the unjoined portion in claim 1.

The last Office Action stated:

With respect to claim 1: Kline discloses an article 20...(Figs. 2, 7), wherein an unjoined portion (namely the portion of the substrate carrying the fastener 30 that is not occupied by bonds 250) is unjoined from an underlying structure of the article, the unjoined portion including an unjoined dimension Y extending substantially parallel to a longitudinal axis of the article, the unjoined dimension Y increasing from a laterally outboard edge of the element unjoined portion to a laterally inboard edge of the element unjoined portion inasmuch as unjoined areas are dispersed between rows of bonds 250 on the ear panels 62, 64...

(Pages 2-3, point 2, emphasis added.)

For reference, Figure 7 of Kline '908 is shown below.



From the Applicant's review, it appears that the last Office Action is characterizing 254 in Figure 7 as an "unjoined portion." Kline '908 describes 254 as follows:

Further, the laminate may comprise low bond zones 254, such as central low bond zone 255, as shown in FIG. 7, generally disposed between the high bond zones 251 and 253, and generally in the center of the ear panels. (As used herein, the term "low bond zones" refers to portions of the laminate comprising a relatively lower frequency of individual bonds, a relatively lesser bonded area or bonds that are relatively weaker than bonds in the high bond zones of the laminate.) The low bond zone(s) 254 may provide increased breathability as well as better properties for ring rolling the laminate in those zones. One example of an ear panel comprising differential bonding is shown in FIG. 7, wherein the individual bond sites are designated 250.

(Col. 16, lines 50-62, emphasis added.) So, according to Kline '908, 254 is a zone that includes bonds, although the bonds are of lower frequency, smaller area, or lesser strength, when compared with high bond zones. This is further evidenced by the fact that Figure 7 shows at least some bonds 250 in the low bond zone 254.

The Applicant submits that the low bond zone 254 of Kline '908 does not read on the "unjoined portion" recited in the Applicant's independent claim 1. As explained above, the term "unjoined" cannot be interpreted to include an area with bonds (such as spot bonds). Such an interpretation would be unreasonably broad, inconsistent with plain meaning, and inconsistent with the Applicant's specification. Accordingly, one of skill in the art would not take the term "unjoined" to include an area with bonds, such as the low bond zone 254.

Therefore, Kline '908 does not include each and every element and limitation of independent claim 1. As a result, the cited reference does not anticipate claim 1 or the claims that depend therefrom. For this reason, the Applicant respectfully requests reconsideration and withdrawal of the § 102 rejections from claim 1 and the claims that depend therefrom.

The last Office Action took issue with the Applicant's argument, as forth above. In particular, the last Office Action took the position that "the whole of region 254 is not cited against the unbonded region, only (naturally) the region where the bonds do not exist." (Page 2, point 1, emphasis added.) So, as the Applicant understand it, the last Office Action is claiming that: if you carefully select portions from the "low bond zone 254", then you can avoid the bonds entirely: it is effectively an unbonded area that reads on the "unjoined portion" in the Applicant's claims. This notion strains credulity.

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A bonded material has bond sites and unbonded area between bond sites. The idea that one can select a portion of a bonded material and label it “unbonded” is a farce.

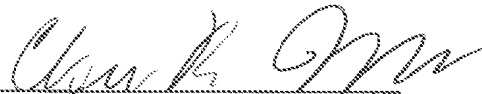
This kind of technical gerrymandering has no place in the examination process. The Applicant urges the Board to repudiate this type of disingenuous rejection.

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SUMMARY

In view of all of the above, the Applicant respectfully submits that the appealed claims have been improperly rejected. The Applicant respectfully requests that the Honorable Board of Patent Appeals and Interferences reverse the rejections of the appealed claims and remand the application to the Examiner with instructions that these claims be allowed.

Respectfully submitted,  
THE PROCTER & GAMBLE COMPANY



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## CLAIMS APPENDIX

1. An article to be worn about a wearer comprising:  
a surface fastening system having a primary direction of load bearing, the surface fastening system including a first surface fastening element and a second surface fastening element, the first fastening element being joined to the article, the second fastening element being disposed so as to be generally in a face to face relationship with the first fastening element when the surface fastening system is in an engaged configuration to fasten at least a portion of the article, wherein an unjoined portion of the second fastening element is unjoined from an underlying structure of the article, the unjoined portion including an unjoined dimension Y extending substantially parallel to a longitudinal axis of the article, the unjoined dimension Y increasing from a laterally outboard edge of the unjoined portion to a laterally inboard edge of the unjoined portion.
8. The article of Claim 1, further comprising a chassis including an absorbent member.
9. The article of Claim 1, wherein the article is selected from one of the group of an absorbent article, a diaper, a sanitary napkin, and a body wrap.
10. The article of Claim 1, wherein the article is adapted to form a pant-like article.
34. The article of claim 1, wherein the unjoined portion includes a longitudinally inboard edge of the second fastening element.
35. The article of claim 1, wherein an overall shape of the unjoined portion is triangular.
36. The article of claim 1, wherein the second fastening element is joined to a carrier web and at least a portion of the carrier web is unjoined from the underlying structure of the article.
37. The article of claim 36, wherein at least a portion of the carrier web is extensible.

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38. The article of claim 36, wherein at least a portion of the carrier web is elastomeric.

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## EVIDENCE APPENDIX

(none)

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## RELATED PROCEEDINGS APPENDIX

(none)